

STATE OF SOUTH CAROLINA  
RICHLAND COUNTY

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

BC X QW AGE 547

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Eleanor Kitzman, as Director of the South  
Carolina Department of Insurance,

Petitioner,

vs.

Foundation Insurance Company

Respondent.  
----- x

Civil Action No. 05-CP-40-04824

**ORDER DECLARING  
INSOLVENCY, COMMENCING  
LIQUIDATION PROCEEDINGS &  
GRANTING AN INJUNCTION &  
AUTOMATIC STAY OF  
PROCEEDINGS**

RICHLAND COUNTY  
FILED  
MAR 24 PM 2:51  
CLERK OF COURT  
J. B. O'NEAL, III  
C.C. & C.D.

This matter comes before me pursuant to the South Carolina Insurer's Supervision, Rehabilitation and Liquidation Act [S.C. Code Ann. §§38-27-10. et seq. (2004)] The Petitioner seeks an order appointing her as Liquidator of Foundation Insurance Company, the Respondent, and authorizing her to commence formal liquidation proceedings. The Respondent has consented to this action in a consent order for Rehabilitation dated October 3, 2005 as amended on January 30, 2006, and consented to by Steven W. Ouzts, attorney for Respondent, and John B. O'Neal, III, Attorney for Petitioner.

The Court, having reviewed the pleadings of record, having heard presentation of counsel, and otherwise being fully informed in the premises, finds:

1. Respondent was licensed as a South Carolina captive insurance company under Chapter 90 of Title 38 of the South Carolina Code of Laws on February 21, 2001.
2. After applying for conversion to a traditional insurer, Respondent was granted a conditional certificate of authority as a traditional insurer under Section 38-5-10 of the South Carolina Code on August 13, 2003. The Department's August 13, 2003 letter provided

that the Director's approval to issue the Certificate of Authority was contingent upon the successful completion of an organizational examination or other examination in order to determine, among other things, that Respondent had adequate capital and surplus to support its business plan.

3. Respondent was subject to a financial examination by the Department of Insurance. The examination commenced on March 29, 2004, and concluded on June 11, 2004. The examination, among other things, determined that loss reserves held by Respondent were understated by \$14,968,493 and that total capital and surplus of Respondent was (\$15,533,477).

4. On April 12, 2004, the Director suspended Respondent's Certificate of Authority to transact business in this State.

5. On May 17, 2004, the Director ordered that Respondent be placed under the Department's supervision pursuant to the Administrative Supervision of Insurers Act. S.C. Code Ann. Section 38-3-150. Moreover, the Director appointed Linda G. Haralson, the Department's Chief Financial Examiner, as Interim Supervisor of Respondent, vesting her with full authority to apply all applicable statutes and regulations. Said order was amended on October 5, 2004 appointing Steve Matthews as Interim Supervisor and again on May 2, 2005 appointing Dianne Irving as Interim Supervisor.

6. By letter dated August 13, 2004, the Department informed Respondent that the conversion of Respondent from a captive insurance company to a traditional insurer was not effective as it had not complied with the conditions set forth in the Department's August 13, 2003 letter. Additionally, by letter dated August 13, 2004, the Department advised Respondent that it was insolvent and directed that it would remain under the Administrative Supervision of the South Carolina Department of Insurance and in run-off status.

7. Eleanor Kitzman, as Director of the South Carolina Department of Insurance, and her successors in office were appointed Receiver for the purposes of rehabilitation of the Respondent pursuant to a Consent Order Declaring Insolvency, Commencing Rehabilitation Proceedings and Granting An Injunction and Automatic Stay of Proceedings dated October 3, 2005, as amended on January 30, 2006.

8. Paragraph fourteen (14) of said consent order states in part ... "Upon petition by the Receiver stating further efforts to rehabilitate Respondent would be useless, this Court will consider entry of an Order of Liquidation of Respondent without further notice of hearing."

9. The Court has jurisdiction over this matter.

10. The Respondent is insolvent and in such condition as to be hazardous, financially or otherwise, to its policyholders, its creditors and the public and that the Petitioner, as Receiver for purposes of rehabilitation of the Respondent, has determined that further efforts to rehabilitate the Respondent would be useless and serve no legitimate purpose.

11. That the immediate appointment of a liquidator is necessary to protect the Respondent's creditors, claimants, and policyholders and it is in their best interest and the best interest of the public that a Final Order of Liquidation appointing the Petitioner as Liquidator of the Respondent and dissolving the Respondent's corporate existence be issued.

**IT IS THEREFORE ORDERED THAT:**

12. PURSUANT TO S.C. Code Ann. §§ 38-27-360 and 38-27-370 (2004), the Petitioner and her successors in office are appointed Liquidator of the respondent. for the purposes of Liquidator of the Respondent.

13. The Liquidator take immediate possession and control of the assets, estate, and all other property of the Respondent of every kind whatsoever and wherever situate and administer them under the general supervision of the Court. The Liquidator is directed to exercise all rights of the Respondent in connection with any collateral or other assets being held for the benefit of the Respondent by any person or entity. The Liquidator hereby is vested with title to all of the property, contracts, and rights of action and all of the books and records of the Respondent, wherever located, as of the entry of this Final Order of Liquidation.

14. The Liquidator liquidate the Respondent's assets, including, but not limited to funds held by the Respondent's agents, subagents, producing agents, brokers, solicitors, service representatives, or others under agency contracts or otherwise which are due and unpaid to the Respondent, including funds remitted by members, unearned commissions, agent balances, agent reserve funds, and subrogation recoveries.

15. The Liquidator shall make an accounting to the court within six months after the date of this order and at least annually thereafter. Such reports shall include at a minimum the Respondent's assets and liabilities and all funds the Liquidator has received or disbursed during the current period, and shall be submitted to the Court for approval without necessity of a hearing.

16. The rights and liabilities of the Respondent and its creditors, policyholders, stockholders, members, and all other persons interested in the estate of the Respondent shall be fixed as of the date of entry of this Order of Liquidation except as provided by § 38-27-560 of the South Carolina Code.

17. Pursuant to § 38-27-380 of the South Carolina Code, that all policies in effect at the time of issuance of this order, other than life or health insurance policies or annuities

covered by the South Carolina Life and Accident and Health Insurance Guaranty Association or a similar foreign guaranty association, will continue in force only for the lesser of:

- (1) a period of thirty days from the date of entry of this order;
- (2) the expiration of the policy coverage;
- (3) the date when the insured has replaced the insurance coverage with equivalent insurance in another insurer or otherwise terminated the policy; or
- (4) the liquidator has effected a transfer of the policy obligation pursuant to item (8) of subsection (a) of § 38-27-400.

18. All claims of any nature whatsoever against the assets of the Respondent held by the Liquidator must be filed upon such forms and accompanied by such proof as shall be required by the Liquidator not later than December 31, 2006. Moreover, the Respondent's policyholders are prohibited from surrendering their policies to the Liquidator for cash for 90 days from the date of this order.

19. The Liquidator shall have full power to take all actions reasonably necessary and proper for the discharge of her responsibilities including, without limitation, those powers enumerated in S.C. Code Ann. § 38-27-400 (2004). Specifically, it is ordered that the Liquidator shall employ and authorize compensation of legal counsel, actuaries, accountants, clerks, consultants and such assistants as she deems necessary, purchase or lease personal or real property as she deems necessary, and authorize the payment of the expenses of these proceedings and the necessary incidents thereof, to be paid out of the Respondent's assets in the possession of the Liquidator or coming into her possession.

20. Pursuant to S.C. Code Ann. §38-27-80 (2004), all present or former officers, managers, directors, trustees, owners, employees, and agents and brokers of the Respondent, and any persons with authority over or in charge of any segment of the respondent's affairs, including attorneys-at-law now or previously retained to represent the Respondent, shall cooperate with the Liquidator in the discharge of her responsibilities, and shall, in addition to all other demands for cooperation, reply promptly in writing to any inquiry from the Liquidator requesting such a reply and make available to the Liquidator any books, accounts, documents, or other records or information or property of or pertaining to the Respondent which may be in their possession, custody or control.

21. All present or former officers, managers, directors, trustees, owners, employees, and insurance agents or brokers and any other individual or entity holding funds belonging to the Respondent are to account to the Liquidator for all funds of the Respondent held by them in their fiduciary capacity or due to the Respondent, and it is ordered that these funds be directed or forwarded by such individual and or entity to the Liquidator unless authorized by the Liquidator to continue holding said funds in said fiduciary capacity until requested by the Liquidator.

22. Pursuant to S.C. Code Ann. § 38-27-390 (2004), the corporate existence of the Respondent be, and is hereby dissolved, and that the Liquidator file a certified copy of this order with the South Carolina Secretary of State.

23. Notice is hereby given that pursuant to S.C. Code Ann. Section 38-27-430, the Court grants an automatic stay applicable to all persons and proceedings, other than the Receiver, which shall be permanent and survive the entry of the Order and which prohibits:


- (a) the institution or further prosecution of any actions or proceedings involving Respondent;
- (b) the obtaining of preferences, judgments, attachments, garnishments, or liens against Respondent, or its assets;
- (c) levying of execution against Respondent or its assets; and
- (d) any other threatened or contemplated action that might lessen the value of Respondent's assets or prejudice the rights of its policyholders, creditors or shareholders or the administration of any proceeding under this Chapter.

24. The Automatic Stay contained in paragraph 23 above does not apply to any action commenced against Steven M. Mariano, (Mariano), in his individual capacity which would in no way affect or potentially prejudice the rights of the respondent. However, the Automatic Stay does apply to any action commenced against Mariano in his capacity in whole or part, as an officer, director, agent representative or in any other official capacity on behalf of the Respondent or in which the Respondent is required to defend Mariano, or where it would be, in the Liquidator's judgment, in the Respondent's best interests to defend, or participate in the defense, of said action to assure the preservation of the respondent's legal rights and interests and/or to prevent the potential loss of assets as a result of said action

25. This Court retains jurisdiction of this cause for the purpose of granting such other and further relief as from time to time may be necessary and appropriate.

AND IT IS SO ORDERED.

BC QW PAGE 554

  
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Hon. J. Ernest Kinard, Jr.  
Chief Administrative Judge  
Fifth Judicial Circuit

This 24 day of March 2006  
Columbia, South Carolina

CERTIFIED TRUE COPY  
OF ORIGINAL FILED

  
C.C.C.P. & G.S.

RICHLAND COUNTY  
SOUTH CAROLINA  
30 MAR 2006